

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7155 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

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RAMESHBHAI MALJIBHAIVASAIYA

Versus

DIVISIONAL CONTROLLER

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Appearance:

MR HK RATHOD for Petitioner

MR HARDIK C RAWAL for Respondent No. 1

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CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 20/03/98

ORAL JUDGEMENT

1. The petitioner, a workman in ST Corporation with 10 years service, was absent from duty for about six weeks from 18.7.1982 to 31.8.1982. The Labour Court dismissed his Reference and confirmed the order of dismissal by judgment and order dated 1st January 1980. During the pendency of this petition, the workman has died on 2nd October 1994. Therefore, the question of actual reinstatement does not arise and the question will

be of wages for the interim period from 3.11.1982, the date of dismissal, till 2.10.1994, the date of death of the workman.

2. The Labour Court has observed in para 7 of its judgment that to remain absent without leave for such a long time is a grave misconduct and to show contradictory and false reasons aggravates the misconduct. The Labour Court has also observed that in the past, for remaining absent without permission, punishment of withholding four increments and reversion to basic pay was inflicted and in spite of such misconduct, he has again remained absent for 43 days without leave.

3. It is true that remaining absent without is a misconduct, but it is not such a gross or grave misconduct as to call for the punishment of dismissal. For second misconduct, the punishment can be higher, but to say that the highest and the extreme punishment of dismissal should be awarded in case of absence for 43 days, is not correct. The approach of the Labour Court is not legal. Therefore, the order of dismissal would be required to be set aside and the workman would be required to be reinstated. However, since the workman has already expired in 1992, there would be no question of reinstatement, but the question of back wages would arise. The fact that the workman is guilty of misconduct, cannot be disputed and, therefore, by way of punishment, 50% of the back wages should be denied and instead of full back wages for all the twelve years, he should be paid 50% of the back wages for the period from 3.11.1982 to 2.10.1994. Such back wages shall be paid to the heirs of the deceased workman who have been brought on record. The back wages shall be paid within three months from the date of service of the writ. Rule is made absolute accordingly.

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mhs/-